



(PC) Stone v. Pfeiffer et al

2024 | Cited 0 times | E.D. California | April 23, 2024

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

ADAM JAY STONE,

Plaintiff, v. C. PFEIFFER, et al.,

Defendants.

No. 1:21-cv-01461-KES-SAB (PC) ORDER GRANTING TO MODIFY THE DISCOVERY AND SCHEDULING ORDER (ECF Nos. 139, 143, 146)

Plaintiff Adam Jay Stone is proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983.

order, filed on January 26, 2024. (ECF No. 139.)

I. RELEVANT PROCEDURAL HISTORY This action is proceeding excessive force claim against Defendants B. Gonzales, G. Morales, K. Gonzales, and Anderson in violation of the Eighth Amendment. Defendants filed an answer to the complaint on October 19, 2022. (ECF No. 48.) On November 22, 2022, the Court issued the discovery and scheduling order. (ECF No. 59.) On June 2, 2023, Plaintiff filed a motion to compel discovery. (ECF No. 90.)

On June 5, 2023, Defendant Anderson filed a motion for summary judgment for failure to exhaust the administrative remedies. (ECF No. 91.)

On June 6, 2023, Defendants filed a motion to stay discovery and to modify the scheduling order. (ECF No. 92.)

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On June 15, 2023, Plaintiff filed two separate motions to compel discovery. (ECF Nos. 98, 99.) On September 11, 2023, Findings and Recommendations were issued to deny Defendant

On September 27, 2023, the Court set this case for a settlement conference at Corcoran State Prison on November 6, 2023, but the case did not settle. (ECF Nos. 117, 123.)



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was denied. (ECF No. 122.)

On November 8, 2023, the Court lifted the stay of discovery, directed Defendants to file a and dispositive motion filing deadlines. (ECF No. 125.)

On January 8, 2024, Plaintiff filed another motion to compel. (ECF No. 132.) On February 28, 2024, Defendants filed an opposition to this motion to compel. (ECF No. 145.) Plaintiff filed a reply on March 11, 2024, along with a separate motion for sanctions. (ECF No. 147.)

compel (ECF Nos. 90, 98, 99) on January 12, 2024 and January 16, 2024, respectively. (ECF

Nos. 133, 134, 135.) On January 29, 2024, the

complaints against Defendants for excessive force in which the incidents occurred no more than ten years prior t ordered Defendants to produce the May 11, 2020 Daily Activity Report. (Id. at 15.)

On January 22, 2024, Plaintiff filed yet another motion to compel. (ECF No. 136.) On February 12, 2024, Defendants filed a reply to the motion to compel. (ECF No. 142.) Plaintiff filed a reply on February 23, 2024. (ECF No. 144.)

scheduling order motion to compel (ECF No. 90). (ECF Nos. 139, 143.) Plaintiff filed a reply on March 1, 2024.

(ECF No. 146.) On April 11, 2024, Defendants filed a timely opposition to P (ECF No. 151.) Plaintiff filed a reply on April 15, 2024. (ECF No. 152.)

II. LEGAL STANDARD Under Rule 16 of the Federal Rules of Civil Procedure, a discovery and scheduling order controls the course of litigation unless the Court subsequently alters the original order. Fed R. Civ. P. 16(d). Modification of a scheduling order requires a showing of good cause, Fed. R. Civ. P. 16(b), and good cause requires a showing of due diligence, *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). To establish good cause, the party seeking the modification of a scheduling order must generally show that even with the exercise of due diligence, they cannot meet the requirement of that order. *Id.* The court may also consider the prejudice to the party opposing the modification. *Id.* If the party seeking to amend the scheduling order fails to show due diligence the inquiry should end and the court should not grant the motion to modify. *Zivkovic v. S. Cal. Edison, Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002). A party may

allowing further discovery. Fed. R. Civ. P. 16(b)(4).

hat it diligently assisted the court with creating a workable scheduling order, that it is unable to comply with the



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time of the issuance of the scheduling order, and that it was diligent in seeking an amendment
Kuschnier Nationwide Credit, Inc., 256 F.R.D. 684, 687 (E.D. Cal. 2009).

III. DISCUSSION By way of exhibit (ECF No. 90), Plaintiff seeks an extension of the discovery
deadline in order to ascertain the (ECF No. 139.)

they will be prejudiced if the discovery deadline is extended. (ECF No. 143.) The discovery deadline
expired on February 6, 2024. (ECF No. 125.) to modify the discovery deadline was filed prior to the
discovery deadline, i.e., January 26, 2024.

(ECF No. 139.) Although Plaintiff is required to follow all applicable rules and order, Plaintiff is
proceeding pro se and he is incarcerated, which affects his ability to draft discovery with the
precision of an attorney. It also entitles him to some additional leniency. See *Ferdik v. Bonzelet*,

courts to liberally c *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986) (holding that pro se litigants
should be treated with great leniency when evaluating compliance with the technical rules of civil
procedure).

In this instance, given that Plaintiff submitted his motion for an extension of time prior to the
discovery deadline, and he has been diligent in propounding discovery to ascertain the identity of the
Doe Defendants, the Court does find good cause to extend the deadline to amend the complaint,
limited to the identity of the Doe Defendants. Indeed, on January 29, 2024, the Court prior motion to
compel and compelled Defendants to provide the Daily Activity Reports for May 11, 2020, and any
complaints and grievances filed against Defendants during the past 10 years. (ECF No. 140.) In his
January 22, 2024 motion to compel, Plaintiff submits that he cannot properly identify the Doe
Defendants with only the names on the sign-in sheets and he seeks further discovery by photograph
identification of the officers working on May 11, 2020. The Court finds that any prejudice to
Defendants to be minimal and will be offset by an extension of the correlating dispositive motion
deadline. Accordingly, Plaintiff's motion to modify the discovery and scheduling order shall be granted.

IV. CONCLUSION AND ORDER Based on the foregoing, it is HEREBY ORDERED that: 1. 2. The
discovery deadline is extended to June 25, 2024; and 3. The dispositive motion deadline is extended to
August 22, 2024.

IT IS SO ORDERED. Dated: April 23, 2024 UNITED STATES MAGISTRATE JUDGE

